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Central Administrative Tribunal
Principal Bench, New Delhi.

OA-2027/94

New Delhi this the *1st* Day of November, 1995.

Hon'ble Sh. B.K. Singh, Member(A)

Smt. Usha Devi,
W/o late Sh. Bhiken Singh,
R/o Vill. Nekpur, PO Khas,
Teh. Modinagar, Distt. Ghaziabad.

Applicant

(through Sh. B.S. Charya, advocate)

versus

1. Union of India
through the Chairman,
Ordnance Factory Board,
Ministry of Defence,
10-A Auckland Road,
Calcutta-700001.

2. The General Manager,
Ordnance Factory,
Muradnagar, Distt. Ghaziabad.


Respondents

(through Sh. VSR Krishna, advocate)

ORDER

delivered by Hon'ble Sh. B.K. Singh, Member(A)

This O.A. No. 2027/94 has been filed by the applicant seeking the relief of a direction to the respondents to appoint the applicant on compassionate ground and to pay her the retiral benefits due to the husband who disappeared from duty sometime in 1982 after having put in 6 years of service which he joined sometime in January, 1976. The applicant had already preferred another O.A. seeking the same reliefs i.e. to direct the respondents to give appointment to the applicant on compassionate ground and to pay the dues



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lying with the respondents, alongwith interest. This was numbered as O.A.No.2615/92 decided on 21.12.93. A copy of this judgement has been enclosed with the O.A. and marked as Annexure A-4. The operative portion of that judgement was to:-

- (i) reconsider the request for compassionate appointment of the applicant keeping in view the circumstances of the family and the consideration shown in a similar case who had been missing from 1983;
- (ii) the respondents should consider what are the dues to be paid to the family by way of death gratuity, insurance amount as per the extant rules; and
- (iii) the respondents were directed to give a detailed letter to the applicant within two months from the receipt of this order, explaining the position with regard to each item of dues as well as the effect of reconsideration of the representation for compassionate appointment.

The O.A. was accordingly disposed of.

The same reliefs have been sought again in this O.A. and this ^{is} clearly barred by principles of resjudicata. The resjudicata is a principle of law universally applicable to all the courts and it embodies a public policy that there should be an end to litigation and further that for the same cause a person should not be vexed twice. The principle

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involved in resjudicata is attracted if:-

- (a) the litigating parties are the same;
- (b) the subject matter of the suit is the same;
- (c) the matter has been finally decided between the parties; &
- (d) the suit has been decided by a court of competent jurisdiction.

Thus, another OA-2027/94 cannot be entertained being barred by resjudicata.

During the course of arguments, the learned counsel for the applicant argued that the reply denying compassionate appointment has come now and the respondents have categorically stated that she is not eligible since she is 42 years of age when as per Deptt. of Personnel & Training circular, the maximum age limit is only 30 years. Thus, she is not eligible for appointment. The judgement/order of the Tribunal has been fully complied with. The direction was to reconsider the question of appointment on compassionate ground and the respondents have considered the matter and have taken a final decision not to appoint her on the ground that she is ineligible for this kind of appointment. The Hon'ble Supreme Court in case of LIC of India Vs. (Mrs.) Asha Ramchandra Ambekar & Anr. (JT 1994(2) SC 183; & Umesh Kumar Nagpal Vs. State of Haryana (JT 1994(3) SC 525, the Hon'ble Supreme Court has to be in the latter judgement held that the financial position/ be considered by the respondents before granting compassionate appointment. Mere death of an employee in harness does not entitle his dependents to a job. Financial condition of the family has got to be taken into

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consideration. In the instant case, the respondents have come out with the plea that in addition to being ineligible, the case does not fall within the parameters of compassionate appointment as laid down in the circular issued by Deptt. of Personnel & Training. The circular lays down that it should be established that:-

- (1) one has no source of income;
- (2) no immovable or movable property from which any income is accruable;
- and
- (3) one is in indigent circumstances.

These are not true in case of the applicant. It has been stated that she is having a residential house in the village with covered area of about 64 sqr.yards in a plot of about 150 sq. yards and also 5 kacbha bhigha agricultural land in the name of her father-in-law (Shri Jai Chand F/o Sh. Bhikken Singh) costing about Rs.40000/- which is being managed by her. The learned counsel for the respondents stated that they will pay all the dues provided the succession certificate is submitted by the applicant to the respondents. Another dimension to the ^{problem} has been added. That she had a posthumous child after the husband disappeared ^{and} that is precisely the reason why the court on 11.7.95 itself wanted the succession certificate to be furnished to the respondents before the entitlements due could be paid to the applicant. The learned counsel for the applicant stated at the Bar that she has already filed a petition before District Judge Ghaziabad for granting a succession certificate and as soon as the same is obtained it will be furnished to the respondents. As already mentioned, compassionate

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appointment cannot be granted as a matter of right nor can it be claimed as a matter of right. As held in the case of Umesh Kumar Nagpal, the appointment is legally impermissible if the financial position is such that it can sustain a person without compassionate appointment. Secondly the compassionate appointment can be granted only to tide over crisis when the earner dies in harness and but for compassionate appointment the family would die of starvation. In the judgement of Umesh Kumar Nagpal, the Hon'ble Supreme Court clearly held the view that compassionate appointment is not a vested right which can be exercised at any time in future. The object being to entitle the family to get over the financial crisis which it faces at the time of death of the soul bread earner, the compassionate appointment cannot be claimed and offered after a lapse of time and after the crisis is over. Thus, the respondents are well within their right to deny the appointment on two grounds i.e. ineligibility and secondly if the applicant has been able to sustain her for 13 long years, she is not facing any financial crisis and as such neither the compassionate appointment can be sought for nor can it be granted because the crisis period is over. As regards dues, the learned counsel for the respondents has categorically stated at the Bar that the dues will be paid when the succession certificate is furnished. Thus, nothing survives and since the matter ^{has} already been adjudicated upon, the same is being dismissed as barred by resjudicata but with the aforesaid observations and without any order as to costs.

/vv/

(B. K. SINGH)
MEMBER (A)